Tri-City Fabricating & Welding Company, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Cases 33–CA–10345 and 33–CA–10424

DECISION AND ORDER

March 31, 1995

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On September 30, 1994, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as explained below and to adopt the recommended Order as modified.[2]

The General Counsel excepts to the judge's dismissal of the 8(a)(3) allegation concerning the discharge of Pete Fretto. We agree with the judge that under *Wright Line*,[3] the Respondent met its burden of proving that it would have discharged Fretto even absent his protected concerted activities. We find that the General Counsel established a prima facie case of discriminatory discharge by showing that Fretto's October 21, 1993[4] discharge occurred in the midst of an organizing campaign of which the Respondent was clearly aware. Fretto, along with other employees, had worn a union button to work several times during the week of August 16 and, like those other employees, was sent home for doing so. Additionally, on August 20, the Respondent's owner and president Don Shewry unlawfully threatened Fretto with unspecified reprisals for his union activities.

The General Counsel having established a prima facie case, the burden shifts to the Respondent to prove that it would have discharged Fretto on October 21 even absent his union activities. As the judge found, Shewry decided to discharge Fretto based on Supervisor Bill Henry's report of his encounter with Fretto. Although Henry's report to Shewry may not have been entirely accurate, the judge found that Henry truthfully conveyed to Shewry that ''Fretto was ready to fight him,'' and that Shewry believed Henry. Clearly, as the judge correctly found, ''[p]hysical intimidation of a supervisor is most serious.'' We reject the General Counsel's reliance on evidence that the Respondent has tolerated threats of physical violence, as well as actual fighting, in the plant without discharging the culprits. There is no evidence in the record of any incidents involving an employee threatening or fighting with a supervisor. All previous incidents contained in the record have been employee-to-employee and, therefore, are not comparable to employee Fretto's confrontation with Supervisor Henry.

Accordingly, we find that the Respondent did not violate Section 8(a)(3) and (1) by discharging Pete Fretto.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Tri-City Fabricating & Welding Company, Inc., Davenport, Iowa, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs.

''(b) Remove from its files any reference to the unlawful disciplinary action for wearing prounion buttons and notify the employees in writing that this has been done and that the discipline will not be used against them in any way.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Respondent and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's failure to find that the Respondent violated Sec. 8(a)(1) of the Act when its owner and president Don Shewry encouraged employees to report to management if employees supporting the Union harassed them or talked about the Union at work. We affirm the judge's dismissal of this allegation because we find no credited evidence in the record to support a finding that Shewry so encouraged employees.

The General Counsel has also excepted to the judge's failure to find that employee Robert David Morrison was denied overtime from August through mid-December 1993. For the reasons stated by the judge, we agree that Morrison was unlawfully denied overtime on August 21 and 28, 1993. Inasmuch as par. 5(b) of the consolidated complaint alleged unlawful denial of overtime on August 21 and 28 only, and as the issue of overtime after August 28 was not fully and fairly litigated during the hearing, we are unable to find that Morrison was unlawfully denied overtime through mid-December.

[2] We have modified the judge's recommended Order and notice to employees to provide standard remedial language.

[3] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[4] All dates are in 1993.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees who are engaged in the protected concerted activity of wearing prounion buttons that they have to take the buttons off and go to work or leave the buttons on, punch out, and leave the plant.

WE WILL NOT deny compensatory time or overtime to employees because they engage in protected concerted activity.

WE WILL NOT threaten employees with unspecified reprisals because they engage in protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole Jim Lynch, Pete Fretto, Debbie Fretto, Robert David Morrison, John Lindsey, Mary Hackett, Stephen Lancy, Donna Bryant, and John St. Clair for any loss of earnings and other benefits resulting from their discipline for wearing prounion buttons, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to their discipline and that we will not use the discipline against them in any way.

WE WILL make whole Robert David Morrison for any loss of earnings and other benefits resulting from his having been denied compensatory time and overtime, less any net interim earnings, plus interest.

WE WILL make whole Stephen Lancy and John St. Clair for any loss of earnings and other benefits resulting from their having been denied overtime, less any net interim earnings, plus interest.

TRI-CITY FABRICATING & WELDING COMPANY, INC.

Judith T. Poltz, Esq., for the General Counsel.
Arthur W. Eggers, Esq., of Moline, Illinois, for the Respondent.
Marlene Gerst, International Representative, of East Moline, Illinois, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On August 18, 1993, the charge in Case 33–CA–10345 was filed against Tri-City Fabricating & Welding Company, Inc. (Respondent). On October 27, 1993, the charge in Case 33–CA–10424 was filed against Respondent. Both charges were filed by the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), AFL–CIO (Union).

On January 3, 1994, the National Labor Relations Board, by the Regional Director for Region 33, issued a consolidated complaint (complaint). The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) when Respondent sent employees home if they did not remove union buttons, denied compensatory time to two employees, imposed more onerous working conditions on an employee, discharged an employee, imposed an overly broad no-solicitation rule, threatened an employee with unspecified reprisals, and encouraged employees to inform management of other employees' union activities. All violations of the Act are alleged to have occurred during the course of a union organizing campaign which culminated with an election which the Union lost.

Respondent filed an answer in which it denied that it violated the Act in any way.

A hearing was held before me in Rock Island, Illinois, on July 19 and 20, 1994.

On the entire record in this case, to include posthearing briefs submitted by the General Counsel and Respondent, and on my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent, an Iowa corporation with an office and place of business in Davenport, Iowa, has been engaged in the business of steel fabrication and welding.

During the past calendar year, Respondent, in conducting its business operations sold and shipped from its facility in Davenport, Iowa, goods valued in excess of $50,000 directly to points outside the State of Iowa and also purchased and received at its facility in Davenport, Iowa, goods valued in excess of $50,000 directly from points outside the State of Iowa.

Respondent admits, and I find, that at all material times Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Overview*

The Union commenced an organizing drive among Respondent's production and maintenance employees in the summer of 1993. An election petition was filed in October 1993 and an election was held in January 1994. The Union lost the election by a vote of 80–28.

It is alleged in the complaint that Respondent violated Section 8(a)(1) and (3) of the Act during the course of the union organizing campaign. I will treat the allegations separately and for the most part in the chronological order in which they are alleged to have occurred.

B. *Respondent Violated the Act When it Sent Employees Home for Wearing Union Insignia*

During the week beginning Monday, August 16, 1993, a number of employees wore union buttons at work. The buttons had printed on them the words ''The UAW is our Union.''

It is uncontested that either Don Shewry, Respondent's owner and president, or Gale Anderson, then Respondent's plant superintendent and since July 1, 1994, its vice president, told a number of employees who were wearing union buttons to either take the buttons off and go to work or to clock out and go home. The employees invariably protested that they had a ''federal right'' to wear the union buttons and Shewry and Anderson would again tell them their option. A number of employees clocked out and left the plant. They, of course, were not paid.

It is well settled labor law that absent some special circumstance, such as maintenance of production and discipline, safety, preventing alienation of customers, employees have the right to wear union buttons while at work. See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).

In the instant case there was no evidence of disruption of production or discipline caused by the employees in question wearing union buttons. The employees in question did not come in contact with the general public and did not wear any special uniform.

Accordingly, Respondent violated Section 8(a)(1) and (3) of the Act when it told the following named employees on the dates indicated to take off their union button and go to work or leave the union button on and clock out:

1. Jim Lynch (August 17 & 18)
2. Pete Fretto (August 17, 18 & 19)
3. Debbie Fretto (August 17, 18 & 19)
4. Robert ''Dave'' Morrison (August 16, 17, 18 & 19)
5. John Lindsey (August 16 & 17)
6. Mary Hackett (August 17, 18 & 19)
7. Stephen Lancy (August 17, 18 & 19)
8. Donna Bryant (August 16, 18 & 19)

9. John St. Clair (August 17, 18 & 19)

The above persons on the dates indicated all elected to keep their union button on and clock out. The remedy for this violation is that Respondent be ordered to cease and desist and to reimburse the employees for any wages or benefits they lost as a result of this discrimination.

On August 20, 1993, 4 days after employees started wearing union buttons, Respondent's president and owner, Don Shewry, announced to the employees at a meeting that they could from that day forward wear union buttons while at work. It did not make whole those nine employees listed above who left work rather than remove their union buttons.

C. *Respondent's Alleged 8(a)(1) Conduct*

As noted above Respondent's president and owner, Don Shewry, gathered the employees together for a meeting on Friday, August 20, 1993, and announced that henceforth employees would be permitted to wear union buttons at work. It is alleged in the complaint that Don Shewry also told employees at this meeting that they would not be permitted to talk about the union on company time and that Shewry also encouraged employees to inform management of the union activities of other employees. There is conflict in the testimony of various witnesses as to what Don Shewry said on August 20, 1993. Some employee witnesses testified that Shewry told employees to report to management those employees who talked about the Union at work and some employees testified that while employees could discuss sports, politics, and family at work they were prohibited from discussing the Union. If this testimony is credited then obviously Section 8(a)(1) of the Act was violated.

However, Don Shewry and Gale Anderson, Respondent's plant superintendent at the time, had a different version of what was said by Shewry to the employees on August 20, 1993. If this is accurate then the Act was not violated.

Apparently Shewry did not read his August 20 comments from a prepared text nor were his comments recorded. I nevertheless credit the testimony of Shewry and Anderson as to what Shewry said, namely, that the employees were told not to talk about the Union on the job such that production was adversely affected and that if harassed by union supporters that employees should report that to management. These statements are not unlawful. I credit Shewry and Anderson because it is obvious on August 20, 1993, Respondent wanted to address a problem, i.e., a number of employees wearing union buttons and were careful not to threaten employees or otherwise violate the Act because the fundamental purpose of the August 20, 1993 meeting with employees, i.e., to let them know they could wear union buttons, was to bring Respondent's conduct within the requirements of the Act.

Accordingly, the Act was not violated on August 20, 1993, by Shewry's statements to employees.

D. *Denial of Compensatory Time to Employees Robert ''Dave'' Morrison and Donna Bryant and Denial of Overtime to Robert ''Dave'' Morrison, Stephen Lancy, and John St. Clair*

Oftentimes prior to the union organizing campaign if an employee were sick or off from work for some reason he or she would receive what was referred to at Respondent's facility as ''compensatory time,'' i.e., they would not be paid for the time missed but would be given some extra hours to work and make up for the time lost.

On August 25, 1993, Robert ''Dave'' Morrison lost 8 hours of work because he was sick. He asked his foreman Bruce Hull for compensatory time but he didn't get it. Why? Well, according to the testimony before me Morrison had been an over-the-road driver and in August 1993—at his request because he wanted to spend more time with his family—he was transferred into the weld department. He was the only employee in the weld department to wear a union button and had left work rather than take the union button off on August 16, 17, 18, and 19, 1993. In addition, an analysis of General Counsel's Exhibit 9 reflects that the other eight employees in the weld department all worked overtime on either August 21 or August 28, 1993, or on both dates.[1] The only rational explanation for Morrison's failure to get 8 hours' compensatory time for the day he was sick and his failure to get overtime on either August 21 or 28 is the fact that he wore a union button during the week beginning August 16, 1993. Accordingly, the denial of compensatory time and overtime to Robert ''Dave'' Morrison was a violation of Section 8(a)(1) and (3) of the Act.

Donna Bryant lost 3-1/2 hours on August 26, 1993, because she had a doctor's appointment. She asked for but never received compensatory time. An analysis of the timecards of the employees in her department, i.e., the assembly department, do not reflect her fellow employees working any overtime in late August 1993 or for the remainder of calendar 1993 for that matter. See General Counsel's Exhibit 7. Since there appears to be no need for her to work and since compensatory time was not a matter of right in the work rules, I do not find that the failure of Donna Bryant to get compensatory time was a violation of the Act.

It is also alleged that employees Stephen Lancy and John St. Clair, both of whom wore union buttons during the week beginning August 16, 1993, were denied overtime on August 21 and 28, 1993. Both Lancy and St. Clair were employees in the press department. On August 21 and 28 press department employees George Minarsich, George Yarrington, Lloyd Pauli, and Floyd Fanning all received some overtime. See General Counsel's Exhibit 8. Stephen Lancy and John St. Clair did not receive any overtime on those dates nor did employee John Lynch, who also wore a union button during the week of August 16, 1993.

The only rational explanation for the fact that all press department employees who wore the union button did *not* get overtime while all press department employees who did not wear union buttons did get overtime is that if you wore a union button you were denied overtime on August 21 and 28, 1993. Accordingly, Respondent violated the Act when it denied overtime to Stephen Lancy and John St. Clair on August 21 and 28, 1993.

The remedy for these violations is a cease-and-desist order, the posting of a notice, and a make-whole remedy as regards Robert ''Dave'' Morrison, Stephen Lancy, and John St. Clair for moneys they lost as a result of the discrimination against them.

[1] Eric Kelly, James L. Martin, James L. Martin II, Robert Olson Sr., Robert Olson Jr., Todd Heber, Cedric Winchester, and Edward Palmer.

E. *Imposition of More Onerous Working Conditions of Donna Bryant*

Donna Bryant wore a union button on the job during the week of August 16, 1993. It is alleged that for about 10 days after Don Shewry told the employees they could wear union buttons at work, i.e., August 20 to 30, 1993, that Donna Bryant's supervisor Jorge Leindo made Bryant's job more onerous by not being efficient in providing her with metal baskets for her to place product in. Basically Bryant was a final assembler and would put together a picker bar which weighed 20 to 22 lbs. She would then place the picker bar in a metal basket which once it was full would be removed and replaced by another metal basket. Bryant alleges that Leindo was slow in bringing the metal baskets to her and she would assemble the picker bar and put it aside. When a metal basket was made available for her use she would have to pick up the assembled picker bars and put them in the metal basket. Leindo's slowness in providing metal baskets added an extra step to Bryant's job. Instead of taking the picker bar off the conveyer belt and putting it directly in the metal basket after she assembled it she instead would put the picker bar on the floor and then, when a metal basket was made available, pick up the picker bar a second time and put it in the metal basket. Bryant was an hourly employee and not paid by the piece. Jorge Leindo, who was no longer working for Respondent, was not called as a witness but Gary Covault, an inspector for Respondent, testified that he inspected in this area of the plant where the picker bars were assembled and he was not aware of any problems regarding Bryant not being furnished metal baskets in an efficient manner. It would not be in Respondent's interest to upset production by going out of their way to delay the providing of metal baskets to Bryant. For all I know Leindo was slower than he should have been in furnishing metal baskets to Bryant but I can't make the jump from that fact, i.e., Leindo's slowness, to retaliation against Bryant for wearing a union button.

Based on all the evidence I do not find that the Act was violated in this matter as alleged in the complaint.

F. *Discharge of Pete Fretto*

Pete Fretto began his employment with Respondent in February 1990. In the summer of 1993 he contacted UAW International Representative Marlene Gerst inquiring about the Union representing the employees at Respondent's facility. Fretto went to five or six union organizing meetings. He signed a union authorization card and gave out 25 to 30 cards to fellow employees before and after work or during breaks. For the last 1-1/2 to 2 years of his employment with Respondent Fretto was in the maintenance department. He was considered by Respondent's management to be a possible successor to maintenance department leadman Ralph Pleasant who went into a semiretired status in early October 1993 due to ill health.

During the week of August 16, 1993, Pete Fretto had worn a union button and been told to take the union button off and go to work or clock out and leave the plant. Fretto had left the plant on August 17, 18, and 19 rather than remove his union button. See section III,B, above.

On August 20, 1993, as noted above, Don Shewry, Respondent's president and owner, told the employees that henceforth they could wear union buttons at work. Later that same day Don Shewry approached Pete Fretto and said to him ''you think you kicked our ass but I got a surprise for you.'' I credit Pete Fretto that Shewry said this to him. Shewry did not specifically deny that he said it. This is a threat of unspecified reprisals in violation of Section 8(a)(1) of the Act.

Pete Fretto's wife, Debbie Fretto, was also employed by Respondent. Her supervisor was leadman Jorge Leindo.[2] Jorge Leindo no longer worked for Respondent at the time of the hearing before me and he did not testify. There is no evidence, however, that he is dead or overseas and beyond the reach of a subpoena. Debbie Fretto still works for Respondent. Debbie Fretto was of the opinion that she and others in her department were not being treated as fair as they should have been treated. She testified that on October 15, 1993—before her husband was fired—she asked Leindo why she and others in her department were not being treated as well as they should be. According to Debbie Fretto, Leindo told her because he had been told to find a way to fire them. During the week of August 16, 1993, three employees in Debbie Fretto's department, i.e., herself, Donna Bryant, and Mary Hackett had all worn union buttons. I found Debbie Fretto to be a credible witness. Don Shewry denied he even told Leindo or any other supervisor to look for a way to fire the union supporters. Leindo, as noted above, did not testify.

It is with this background that on October 21, 1993, Respondent fired Pete Fretto. The workday for Pete Fretto started at 7 a.m. By 7:30 a.m. that day he was fired allegedly for insubordination and for threatening newly appointed Supervisor Bill Henry.

When Pete Fretto reported for work on the morning of October 21, 1993, he was told that Bill Henry was the new maintenance department leadman and that he was to take orders from Bill Henry. To no one's surprise, least of all management's, Pete Fretto was upset. Fretto had been with Respondent since February 1990 whereas Bill Henry had been with Respondent since only March 1993. Fretto has been told by Plant Superintendent Gale Anderson earlier that he might succeed Ralph Pleasant as maintenance department leadman.

Pete Fretto, rightly or wrongly, thought himself more qualified for the maintenance leadman position than Bill Henry and told management as much that very morning. The maintenance leadsman position is a supervisory position within the meaning of the Act.

It is uncontested that Pete Fretto let Gale Anderson know that very morning that he thought that he (Fretto) should not have to take orders from Henry who Fretto claims didn't know his ''ass from a hole in the ground.'' Anderson told Fretto that the decision had been made and that ''any derogatory remarks could be grounds for termination.'' Bill Henry told Pete Fretto that they were going to work on a tohkiem gauge in the tank department. Fretto went with Henry to the tank department. Fretto carried with him as he should have two 18-inch pipe wrenches. Employee Richard Neece approached where Fretto and Henry were working. According to Neece, who is still an employee of Respondent, Fretto was upset and said to Neece that Henry had ''sucked butt to get

[2] Respondent stipulated with the General Counsel that the persons it referred to as leadmen at its plant were supervisors and agents within the meaning of Sec. 2(11) and (13) of the Act.

the [leadman] job.'' Henry told Pete Fretto he didn't have to ''take this shit'' and Pete Fretto said to Henry ''well, what are you going to do about it?'' Henry left and consulted with Don Shewry.

According to Pete Fretto he said in the presence of Neece that Henry was his supervisor and Neece said ''you have to be kidding'' and Henry said ''I don't have to take this shit.'' Pete Fretto admitted he then said to Henry ''what are you going to do about it?''

According to Bill Henry, Neece asked Pete Fretto to help him on something and Pete Fretto said, indicating Henry that Fretto would need permission from Henry who is a ''punk and a suck ass'' and Henry asked Fretto what he said and Fretto said ''you're a punk and a suck ass and I ought to kick your punkie ass.'' Henry said he then went to see Don Shewry.

According to Don Shewry, Bill Henry came to see him immediately after the encounter. According to Shewry Henry ''come in and he said he [Fretto] threatened me with a bar. He cussed me and threatened to hit me over the head with a pipe.'' Shewry believed what Henry said and ordered that Pete Fretto be discharged. At the hearing before me Bill Henry said, and it is uncontested, that Pete Fretto had two pipe wrenches but, according to Henry, Neece, and Pete Fretto, Fretto never held the pipe wrenches in a threatening manner toward Henry.

This is a classic *Wright Line* type case. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), is the Board's landmark decision on how to analyze so-called dual-motive cases. In the final analysis I find that the General Counsel has *not* met her burden of proving by a preponderance of the evidence that Pete Fretto was discharged because of his union activity. I note that Gale Anderson clearly told Fretto, and Fretto concedes this, that he could be fired for making derogatory remarks to his new supervisor Bill Henry and Fretto did precisely that according to the testimony of Richard Neece whom I credit. According to Neece, Fretto almost immediately after being warned *not* to make derogatory remarks to Henry did exactly that. According to Neece, Fretto said that Henry ''sucked ass'' to get the promotion to leadman. I saw Fretto, Henry, and Neece on the stand and even though their versions of exactly what was said varies it is clear that Pete Fretto was ready to fight Henry right there on the plant floor. Henry conveyed to Shewry, albeit in not the most accurate manner, that Fretto was ready to fight him. No boss can allow this. I believe Respondent was within its rights to fire Pete Fretto and did so because of his encounter with Henry and not because of his union activity.

Pete Fretto did himself in. I'm sure Respondent was just as happy to get rid of him because of his prounion activity but they didn't fire him because of his union activity. Physical intimidation of a supervisor is most serious. There was no evidence that Respondent was ever faced with an exactly similar situation. While it is true from the record before me that cursing occurred and there was no discipline handed out and that employees physically fought one another and, in the absence of one of the parties to the fight complaining to management, no discipline was handed out there was no evidence of the type of threatened violence or physical intimidation by an employee toward a supervisor that occurred between Pete Fretto and Bill Henry on the morning of October 21, 1993.

Considering what Jorge Leindo told Debbie Fretto Respondent may well have been looking for (maybe even hoping) that Pete Fretto would engage in serious misconduct so they could fire him. Unfortunately he accommodated them.

The discharge of Pete Fretto was not a violation of Section 8(a)(1) and (3) of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act when it told the nine employees named in section III,B of this decision during the week of August 16, 1993, who were engaged in the protected concerted activity of wearing prounion buttons, that they could take off their union buttons and go to work or keep on the union buttons, punch out, and leave the plant.

4. Respondent violated Section 8(a)(1) and (3) of the Act when it denied compensatory time to Robert ''Dave'' Morrison in August 1993 and when it denied overtime on August 21 and 28, 1993, to Robert ''Dave'' Morrison, Stephen Lancy, and John St. Clair because they engaged in the protected concerted activity of wearing prounion buttons at work.

5. Respondent violated Section 8(a)(1) of the Act when it threatened Pete Fretto with unspecified reprisals because the employee expressed support for the Union.

6. The unfair labor practices committed by Respondent effect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Tri-City Fabricating & Welding Company, Inc., Davenport, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling employees who are engaged in the protected concerted activity of wearing union buttons that they have to take the buttons off and go to work or leave the buttons on, punch out, and leave the plant.

(b) Denying compensatory time or overtime to employees because they engaged in protected concerted activity.

(c) Threatening employees with unspecified reprisals because they engaged in protected concerted activity.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Make Jim Lynch, Pete Fretto, Debbie Fretto, Robert ''Dave'' Morrison, John Lindsey, Mary Hackett, Stephen Lancy, Donna Bryant, and John St. Clair whole for any loss of pay or benefits suffered by them when they left work during the week of August 16, 1993, rather than remove their prounion buttons and make Robert ''Dave'' Morrison whole for any loss of pay or benefits because of the unlawful denial of compensatory time to him in August 1993 and make Robert ''Dave'' Morrison, Stephen Lancy, and John St. Clair whole for any loss of pay or benefits because they were discriminatorily denied overtime on August 21 and 28, 1993. Backpay to be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). (See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).)

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Davenport, Iowa facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

---

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''